

J. S. W. asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's dismissal of Mr. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

The background leading to Judge La Jeunesse's dismissal of Mr. W.'s claim is set out in Judge La Jeunesse's decision. In summary, Mr. W. seeks workers' compensation benefits for injuries allegedly suffered while employed by SEI-Questar. Judge La Jeunesse appointed a medical panel to examine Mr. W. and evaluate the medical aspects of his claim. However, despite several attempts, the medical panel was unable to contact Mr. W. at the addresses and telephone numbers he had provided. This went on until January 6, 2005, when Judge La Jeunesse obtained yet another address and telephone number from Mr. W..

Judge La Jeunesse passed Mr. W.'s latest contact information on to the medical panel. On January 26, 2005, the medical panel reported to Judge La Jeunesse that Mr. W. had failed to appear for examination, even though the appointment had been scheduled with him by telephone and then confirmed by letter.

On the strength of the medical panel's letter of January 26, 2005, and faced with Mr. W.'s apparent refusal to cooperate with the medical panel's examination, Judge La Jeunesse summarily dismissed Mr. W.'s claim with prejudice.

Mr. W. now asks the Commission to set aside the order of dismissal. Mr. W.'s motion is supported by his written statement and other corroborating records that indicate Mr. W. was arrested on January 2, 2005, and remained incarcerated through January 26, 2005. Thus, according to Mr. W., he had no knowledge of the alleged medical panel examination.

DISCUSSION AND CONCLUSION OF LAW

The issue now before the Commission is whether the facts support dismissal with prejudice of Mr. W.'s application. If it were established that Mr. W. knew of the January 25, 2005, medical panel appointment but had intentionally refused to cooperate, the Commission would affirm Judge La Jeunesse's summary dismissal of Mr. W.'s application. However, Mr. W. has put forward an explanation of events that, if true, would establish he did not know of the medical panel.

Under these circumstances, the Commission concludes that Mr. W. is entitled to a hearing to present evidence that would excuse him from sanction for willful failure to cooperate with the medical panel. On remand, the ALJ assigned to the case may, with notice and hearing, consider whether dismissal is proper, or may proceed to adjudicate and decide the claim on its merits.

ORDER

The Commission sets aside the Order of Dismissal dated January 27, 2005, and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 29th day of August, 2005.

R. Lee Ellertson, Utah Labor Commissioner